

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

RESURRECTION HOME HEALTH SERVICES, A SUBSIDIARY OF RESURRECTION HEALTH CARE CORPORATION ¹

Employer

and

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 134, AFL-CIO

Petitioner

Case 13-RC-20558

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record² in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.³

3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:⁴

All full-time and regular-part-time registered nurses including nurse liaisons, referral/intake nurses, managed care coordinators, scheduling coordinators, case managers, home care nurses, document review nurses, and home care nurse/ private duty employed by the Employer in its Skokie based Chicago area home health care operations; but excluding other professional employees, technical employees, guards and supervisors as defined in the act and all other employees.

DIRECTION OF ELECTION*

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll

period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by International Brotherhood of Electrical Workers, Local 134, AFL-CIO

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of the full names voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the full names and addresses of all of the eligible voters, shall be filed by the Employer with the undersigned Regional Director who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in **Suite 800, 200 West Adams Street, Chicago, Illinois 60606** on or before **May 2, 2001**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court Building, 1099-14th Street, N.W., Washington, D.C. 20570**. This request must be received by the Board in Washington by **May 9, 2001**.

DATED April 25, 2001 at Chicago, Illinois.

/s/ Elizabeth Kinney
Regional Director, Region 13

*/ The National Labor Relations Board provides the following rule with respect to the posting of election notices:

(a) Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Director in the mail. In all cases, the notices shall remain posted until the end of the election.

(b) The term "working day" shall mean an entire 24-hour period excluding Saturdays, Sundays, and holidays.

(c) A party shall be estopped from objection to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Director at least 5 working days prior to the commencement of the election that it has not received copies of the election notice.

- 1/ The names of the parties appear as amended at the hearing.
- 2/ The arguments advanced by the parties at the hearing have been carefully considered.
- 3/ The Employer is engaged in the business of providing a variety of health related services, including the provision of non-acute home health care services from its main facility currently located at 4930 West Oakton, Skokie, Illinois 60077.
- 4/ The Petitioner seeks a unit of all full-time and regular part-time registered nurses (RNs) employed by the Employer at its Skokie, Illinois facility who are engaged in providing home health care services to patients. The Petitioner would exclude RNs working in the job classifications of Home Care Nurses/Private Duty, Nurse Liaisons and Senior Services Liaisons, User Analysts, and Outcome Analysts. The Petitioner takes the position that the foregoing RN's are not involved in patient care and do not have a community of interest with the RNs engaged in patient care such as to require their inclusion in an appropriate unit.

The Employer contends that the unit sought by the Petitioner is inappropriately narrow both as to its composition and scope. With respect to composition, the Employer asserts that only an all-professional employee unit is appropriate. Thus, Employer takes the position that the appropriate unit must also include the RN's working in the job classifications that the Petitioner would exclude and it must also include Speech Therapists, Physical Therapists, Occupational Therapists, Medical Social Workers, Licensed Practical Nurses and Community Relations Representatives. The Employer contends that registry employees working in the foregoing job classifications of RNs, Speech Therapists, Physical Therapists, and Occupational Therapists should also be included in the unit. Registry employees are a pool of employees that work on an "as-needed" basis to insure patient coverage.

With respect to unit scope, the Employer maintains the appropriate unit must also include the professional employees working at the home health care operations of its newly acquired health care facilities - Holy Family of Nazareth – Holy Family Medical Center and Holy Family Health Center, and Saint Mary of Nazareth Hospital Center. St. Mary's operates a home health care facility out of an office located near the intersection of Belmont Avenue and Laramie Avenue in Chicago, Illinois. This is approximately seven city miles from the Employer's current facility located 4930 West Oakton, Skokie Illinois. Holy Family, is located at 100 N. River Road, Des Plaines, Illinois, and is approximately nine miles away from the Employer's current facility.

Overview of Employer's Organization

Resurrection Health Care Corporation (RHC) is a Illinois not-for-profit corporation. RHC is a large, complex health organization with a number of subordinate entities engaged in the business of providing health care and related services in the greater Chicagoland area. At the present time, RHC operates six acute-care hospitals as defined in 29 CFR 103.30(f)(2): Our Lady of the Resurrection Medical Center, Resurrection Medical Center, St. Francis Hospital, Westlake Hospital, Holy Family of Nazareth (Holy Family Medical Center and Holy Family Health Center), and Saint Mary of Nazareth Hospital Center. Subsidiary nonprofit corporations of RHC include: nine nursing and rehabilitation centers; four retirement living facilities; and, a number of specialty care facilities and operations, including Resurrection Home Health Services (RHHS), the Employer at issue herein.

RHC is basically a management and service corporation which provides a variety of services to its subsidiary corporations, including administrative services, management services, and other support services. Most particularly, RHC provides a range of professional human resource management services to all its subsidiary corporations. The records is not clear as to the extent of functional integration between the various subsidiary corporations with regard to administrative functions - payroll, accounting, budgeting, hiring and the like. All employees of RHC, including those of RHHS, are subject to the same personnel policies which are set forth in RHHS' Employee Handbook, which includes such matters a time clock/record keeping requirements, orientation program, wearing of ID badges, dress codes, attendance policies, codes of conduct, discipline program, benefits programs, job bidding and transfer policies. The record does not indicate whether these policies are implemented and administered on a single facility basis, single entity basis, or are system-wide. At the time of the hearing, RHC had not integrated the employees of the newly acquired home health care operations of Holy Family and Saint Mary into the RHC personnel and payroll system.

Operations of RHHS

Resurrection Home Health Services (RHHS) is licensed by the State of Illinois to provide health care, including nursing and allied health services to patients in their homes or residences. The allied services provided by RHHS include, *inter alia*, the professional expertise of RNs, occupational therapists, physical therapists, speech therapists and social workers. RHHS is certified by the Heath Care Finance Administration as a Medicare certified home health agency.

Most of the patient care services are provided by RHHS in the patients' homes. The administrative and managerial functions of RHHS are centered in a four story building located 4930 West Oakton, Skokie, Illinois. The RHHS operation occupies two floors of the building. RHHS is under the overall supervision of Vice President Marie Cleary-Fishman. Reporting to Cleary-Fishman are: Francine Ostrander, RN, Director, Clinical Services; Matthew Rivotto, Director, Marketing/Community Relations; and, Betye Ochoa, Manager, Information Systems. Reporting directly to Francine Ostrander are Rosann Prosser, Team Leader Comprehensive Care ('Private Pay'); Juliana Krupka, Manager Education, Lois Aburano, Manager Performance Improvement; Sylvia Kmiec, Manager, Scheduling, and a set of Team Leaders for the Medicare home health care ('Public Pay') side of the operation, including Pat Bak, Denise Ziobro, Juliana Krupka (acting) Lois Aburano (acting).

a. Nurse Liaison/Senior Services Liaisons

RHC and its network of acute-care hospitals and assisted living facilities are a prime source of patient referrals for the home health care services of RHHS. RHHS utilizes a portion of its nursing staff, classified as Nurse Liaisons, to market and assist the acute care facilities and their patients in the utilization of RHHS home health services. RHHS currently has four RNs assigned to perform the Nurse Liaison function at its various acute care hospitals: Elaine Goggin, RN, Jane McCann, RN, Grace Newlin, RN, and Beth Schrap, RN. RHHS has one Senior Services Liaison, Rita Torf, who performs much the same functions as the Nurse Liaison at senior services facilities. The Nurse Liaisons' primary function is to administratively process doctors' orders for home health services or durable medical equipment when a patient is discharged from the acute care facility and to gather the data necessary to forward to the RHHS in-take department to begin the process of admitting a patient into the home health care system.

Nurse Liaisons and the Senior Services Liaison collaborate with care planners at the hospitals and nursing homes to coordinate discharge plans for patients and the patients continuing care needs. The Nurse Liaisons then communicate with the RHHS intake personnel necessary information regarding the administrative referral of the patient to the RHHS

The Nurse Liaison position does not provide direct nursing care to patients in their homes or dwellings. However, the position does assess potential candidates for home health care services and is involved in pre-discharge educating and planning for the patient and significant others. The Nurse Liaisons maintain some connection with the patients in the event the patient has to return to the acute care facility with regard to monitoring the patient and coordinating the resumption of home care services. RHHS classifies the Nurse Liaison as an exempt salaried position, requiring State of Illinois RN licensure, with a wage rate range of \$18.91 to \$29.50 per hour. The Nurse Liaisons do not participate in any of the RHHS productivity based compensation system used for certain field personnel. The Nurse Liaisons report to both Matthew Rivotto, Director, Marketing/Community Relations, and Francine Ostrander, RN Director, Clinical Services. The inclusion of this position in the unit is disputed.

b. Referral/Intake Nurse

RHHS utilizes the services of the Referral/Intake Nurse (RN Intake) to begin the administrative process of admitting patients to the home health care system. The basic duties of the RN Intake nurse are to handle preliminary admission issues, review intake information for completeness, and to verify patient insurance benefits; further duties include the administrative processing of the information into the RHHS computer system. RN-Intake nurses are required to maintain knowledge of Medicare guidelines regarding eligibility, coverage of services, and conditions of participation. There are four individuals currently performing the RN-Intake duties at the RHHS administrative facility located in Skokie, Illinois: Althea Allen, RN, Nancy Barabesi, RN, Susan Enright, RN, and Susan Trella, RN. RHC classifies the RN-Intake nurse as an exempt salaried position, requiring a RN licensure, with a wage rate range of \$17.49 to \$27.11 per hour. The RN Intake nurses work regularly scheduled hours and their principal work station is located at the RHHS administrative facility. The RN-Intake nurses report to both Matthew Rivotto, Director, Marketing/Community Relations, and Francine Ostrander, Director, Clinical Services. The parties stipulated to the inclusion of this position into the unit.

c. Managed Care Coordinator

If it is discovered during the admission process that a patient has insurance through a managed care company, the Managed Care Coordinator will become involved in the initial patient processing, along with the intake nurses. The Managed Care Coordinator obtains information and provides reports on patient status and care plan for Medicaid and managed care companies. Carol Saleh, RN, holds this position and works regularly scheduled hours out of the RHHS administrative facility. RHC classifies the RN Managed Care as an exempt salaried position, requiring a RN licensure, with a wage rate range of \$17.49 to \$27.11 per hour. The parties stipulated to the inclusion of the Managed Care Coordinator position into any unit found appropriate herein.

d. Scheduling Coordinator

After a patient has been administratively processed into the RHHS system, the patient's information is sent to the scheduling office where a Scheduling Coordinators becomes involved. Two people perform the RN scheduling function at the RHHS facility, Sophie Sagala, RN and Emily Strahl, RN. The Scheduling Coordinators staff all referrals in accordance with RHHS policies and regulatory standards. Pursuant to departmental guidelines, the RN Scheduling personnel assign a patient to a Case Manager, a full-time RN, for the development and implementation of a comprehensive plan of care that meets the needs of each patient. RHC classifies the Scheduling Coordinator as an exempt salaried position, requiring State of Illinois RN licensure, with a wage rate range of \$ 17.49 to \$27.11 per hour. The Scheduling Coordinators work regularly scheduled hours and their principal work station is at the RHHS facility. The parties stipulated to the inclusion of the Scheduling Coordinator position into any unit found appropriate herein.

e. Case Manager and Home Care Nurse

In the main¹, the skilled patient care on the public pay side of RHHS's operation is performed by two sets of professionals: RNs and therapists. The nursing care provided by RHHS encompasses the full range of skilled nursing care as defined in the Illinois Nursing Practices Act, 225 ILCS 95/1 *et. seq.*, and includes the duties outlined by the Case Manager and Home Care Nurse position descriptions, such as developing comprehensive care plans for patients, evaluating patient progress and effectiveness of care, and providing clinical and technical aspects of nursing care to patients in accordance with standards of practice. All the field RN's time is essentially devoted to direct patient care and associated record keeping. All patients are provided some form of skilled nursing care, including an initial comprehensive medical assessment, "from head to toe", of each patient upon admission. The degree of patient care provided by RNs varies from patient to patient, depending on their unique medical needs. Overall around forty to fifty per-cent of the patients require skilled nursing care only; most of the remainder require some combination of nursing and therapy based care. There are some patients that require therapist-only care but, even in those circumstances, the RN case manager is responsible for overseeing the administration and implementation of the patient's overall care plan.

RHC classifies the Case Manager and Home Care Nurse as exempt salaried positions, requiring a RN licensure. According to Vice President Marie Cleary-Fishman, RHHS treats the two positions as an aggregate, with all full time field RNs being considered Case Managers/Home Care Nurses, and part-time and registry field RNs being considered Home Health Care Nurses. All field nurses devote a large percentage of their work time providing skilled nursing care to home bound patients as well as complying with a significant amount of documentation required by government regulation in connection with Medicare patients. The field RNs are provided laptop computers for the purpose of maintaining the myriad of medical records and Medicare documentation required by the government.

¹ Ninety-five percent of the patients of RHHC are Medicare patients and their care is coordinated through the 'Public Pay' side of the operation. RHHS operates private pay operation that is called Comprehensive Care. The details of this program will be described below.

The field RNs work a variety of hours at diverse remote locations within their assigned territory. There are four teams covering specific geographical area: northwest southwest, southeast and northeast. The field RNs largely determine their own hours of work but are required to work one Saturday per month and one Sunday per month. The RHHS field RNs are also on call from 8:00 a.m. until midnight on weekends and from 4:30 p.m. until midnight during the week. On-call time is compensated at a rate of \$3.00 per hour. The full time and regular part-time RHHS field nurses are compensated through a system that combines a base wage rate range of \$17.49 to \$27.11 per hour with a productivity based program that uses a sliding scale of hourly rates depending on the level of skill and other factors needed for the home visit. Specifically, the salary is predicated on the field RN meeting a productivity goal of 30 visits per week or 60 visits per pay period. Visits in excess of that number are compensated on a per visit basis, with the exact hourly amount varying depending on the type of work done during the visit. For example, on the low end, a field nurse making a routine follow-up visit on a patient on a week day would make \$32/visit, with a 'visit' equating roughly to a hour of work. On the high end, a field nurse making a holiday admission would be compensated at a \$61/visit rate. There are approximately thirty-three RNs performing medicare-based home health care to patients on a full or part-time basis, as well as ten registry nurses.² The parties stipulated that the full time and regular part time field RNs would be included in any unit found appropriate herein.

f. The Professional Therapists

The Employer uses a multi-disciplinary or team approach to patient care. Under this approach, the knowledge and expertise of various therapists are utilized to treat the complex medical problems of approximately fifty percent of the home bound patients. The Employer takes the position that these therapists should properly be included in any unit found appropriate herein. The Petitioner does not seek to represent any of the therapists.

In all circumstances, the medical professional treating the patients, including the physical, occupational, and speech therapists, utilize the patient information gathered through the complete medical assessment conducted by the case managers during the patient-admission process.

Physical therapists are required to possess a Bachelor's degree in Physical Therapy, occupational therapists – a Bachelor's degree in Occupational Therapy and speech therapists – a master's degree in Speech Therapy plus a clinical fellowship. All are required to be licensed by the State of Illinois. Their hourly wage rates are – physical therapists – \$20.23 to \$31.90; occupational therapists – \$18.91 to \$29.50; and, speech therapists – \$17.49 to \$27.11. The therapists also participate in a productivity-based compensation program similar to that of the field RNs. However, the system is a stand alone program unique to the three stated professional positions. Consistent with the multi-discipline or team-based patient care system, the therapists are all assigned to a team within the RHHS system under the direct supervision of the RN team leader. Clinically, the therapists' patient visits are coordinated by the RN case managers. There is apparently no dispute between the parties that the RN team leaders are supervisors within the meaning of Section 2(11) of the Act.

² Registry nurses employed by RHHS are managed, scheduled, and utilized in the same fashion as full-time and regular part-time RN in the field for providing skilled home health patient care. Generally, the Registry nurses work a flexible schedule of hours on an "as needed" basis. They are not paid benefits accruing to the regular RHHS staff and are not guaranteed work. Because they are not paid benefits, they received a higher wage rate.

All three types of therapists, physical, occupational, and speech, evaluate and perform assessments on patients and develop specific treatment programs within their specialties that are incorporated into the overall care plan developed and administered by the RN Case Manager. Each therapy specialist performs their respective skilled care for the home bound patients as outlined by their enabling statutes and position descriptions. The physical therapist's assessment focuses principally on the patient's range of motion strength and balance. RHHS has twenty-five physical therapists on staff, and uses the services of 5 therapists on the RHHS Registry. The occupational therapist's assessment and care centers on concerns involving the patient's ability to conduct daily living activities in light of their medical conditions. RHHS utilizes two registry occupational therapists. The speech therapist's assessment and treatment focuses on a patient's ability to swallow and communicate. RHHS utilizes one registry speech therapist. After the respective therapists have conducted their assessments, their findings and treatment plans are communicated telephonically (mostly by voice mail) to the patient's RN case manager for incorporation into the overall care plan.³

The daily routine of the therapists rarely encompasses face to face interaction with the RN field staff. It is firm practice at RHHS that the professionals do not visit patients at the same time. Within the parameters of their specialties, the overall care plan, and insurance coverage, the therapists use their own professional judgment regarding the number of visits the patients require. The therapists do not attend the bi-weekly patient case management meetings between RN case managers and the team leaders. The therapists do, however, attend monthly professional team meetings, as well as quarterly "town hall meetings" with the rest of the RHHS staff. The therapists are not required to be on call for medical issues and do not participate in the off-hours medical triage function. The therapists do not have nearly as much record keeping responsibility as the RNs, who are primarily responsible for the Medicaid record keeping requirements. There is no evidence any instances of professional interchange between RNs and other professional staff.

g. Medical Social Workers

Medical Social Workers (MSW) are required to possess a Master's degree in social work. RHC classifies the social worker position as an exempt salaried positions with a salary range of \$15.02 to \$22.99 per hour. There is no requirement for the holder of the position to have a license. MSWs are involved in the planning, and implementation of social work services for patients and their families in the home setting. They participate in the development of overall care plans with the case manager RNs and other RHHS professionals. The MSWs are on a similar productivity program as the field RNs and therapists, though the compensation structure of the MSW productivity program is unique to this single position. There is no evidence of any

³ RHHS also utilizes several independent companies for the purpose of supplying the services of various therapists to their patients. After reviewing subpoenaed records of the agencies, the Employer and the Petitioner stipulated that the therapists supplied to RHHS by Community Physical Therapy and Associates, Ltd., worked less than 4 hours per week for the last three months and would not be appropriately included in any unit found appropriate herein. The Employer and the Petitioner also reviewed subpoenaed payroll records from Therapeutic Services of America, and stipulated that there were two therapists used by RHHS on an average of more than four hours a week for the last three months and that one therapist had been scheduled for over 4 hours a week for the last month, and would most likely continue working in such a fashion in the near future.

professional interchange between the medical social worker and the field RNs or the therapists. The Union does not seek to represent employees in this position.

h. Document Review Nurse

As a result of the extensive document and record keeping requirements for each patient placed upon the Case Managers and Home Care Nurses due to the extensive government regulations and requirements for medicaid patients and public pay patients, RHHS employs five Document Review Nurses. The Document Review Nurses review admission, recertification and discharge record packets for completeness and conformity to government requirements. They also provide technical assistance to staff RNs regarding properly filling out the required documents, as well as providing educational training to nurses concerning the documentation RNs are required to keep. The Document Review Nurse is defined by RHC as a exempt salaried position, one grade level higher than the Home Care RN position, and requires Illinois RN licensure. The work station of the Document Review Nurses is at the Skokie, Illinois office of RHHS. The position routinely interacts with the field professionals. The parties have stipulated the position into any unit found appropriate herein.

i. User Analyst, Outcomes Analyst, and Community Relations Representative

The User Analyst, Outcomes Analyst and Community Relations Representative are professional employees utilized by RHHS to provide the operation with expertise in discrete business functions. These position do not require any type of medical licensure, and are not involved with patient care. Rather, they involved in information systems management and marketing. The Employer maintains all these professionals should be included in any unit found appropriate. The Petitioner would exclude these professionals from any unit found appropriate.

The User Analysis position is utilized by the Manager, Information Systems, Betye Ochoa, for training employees on information systems, maintaining, and operating the various information systems utilized by RHHS. The position is currently held by Antoinette Iacullo, RN. She is a former home care RN, who is now primarily responsible for the training employees and the daily utilization of the Pathways Home Care IS Information Systems product. Iacullo is on call at all times in connection with information systems questions. In this regard, the position interacts regularly with the field RN staff. RHC classifies the User Analysis position as an exempt salaried position. The position description does not require a RN licensure, though, in the past, RHHS has utilized Iacullo's RN accreditation for ancillary assignments to other discrete direct patient care duties. The User Analyst position has a salary range of \$19.21 to \$20.20 per hour. The User Analyst principal work area is in the RHHS administrative facility in Skokie, Illinois.

The Outcomes Analyst position reports directly to Lois Aburano, Manager, Performance Improvement. Nancy Santucci currently holds this position. It is unclear from the record as to whether Ms Santucci is a licensed RN. RN licensure is not specifically required for the job in the job description. The Outcomes Analyst is involved with developing, implementing, and evaluating performance improvement activities and providing management with data analysis and quality control. She also assists in the review of documentation for consistency and compliance with the mandates of government regulations. The Outcome Review job is defined by RHC as a exempt salaried position, with a salary range of \$19.21 to \$29.20 per hour.

The Community Relations Representative reports directly to Matthew Rivotto, Director, Marketing/Community Relations. The position is currently held John Matzek. RHC classifies the Community Relations Representative as a exempt salaried position with a salary range of \$19.21 to \$29.20 per hour. The position requires an Associates Degree and does not require a medical or professional licensure of any sort. The Community Relations Representative is responsible for recruiting physicians to refer patients to RHHS, and the position is essentially a direct marketing position for the organization. The Community Relations Representative does not provide any direct professional skilled care to RHHS patients.

j. Comprehensive Care Registered Nurses

Operationally, as noted above, RHHS also provides privately-funded home health care through its Comprehensive Care program.⁴ It is organizationally separate from the ‘public pay’ side of RHHS for a variety of reasons, principally due to source of payment for services and the fact that the comprehensive nurses do not deal with the extensive government mandated paperwork. The program utilizes the services of a variety of personnel, most notably, the Senior Services Liaison (Senior Liaison) and the Home Care Nurse/Private Duty (Private Duty RNs), the positions at issue herein. The site work location of the Private Duty RNs, as well as some of job duties, is somewhat different than that of the of “public pay” field Case Managers and Home Care Nurses– through all of the RNs providing comprehensive care provide skilled nursing care to their patients.

The Comprehensive Care program operates in the various assisted living or senior services facility operated by the RHC. The record indicates that the Private Duty RNs, in the main, provide skilled nursing care and support to patients at these facilities through the operation of clinics. While the nursing care performed by the Private Duty RN’s is similar to that performed by the Home Care Nurses, they do not have to do the extensive paperwork required of the Home Care Nurses. The assisted living facilities at which these clinics are located pay RHHC for the services of the Private Duty RNs. RHC defines Private Duty RNs as exempt salaried positions with a salary range of \$17.49 to \$27.11. The Senior Service Liaison provides services similar to those performed by the RN Liaisons on the public pay side of the RHHS operation.

**k. Merger between RHHS and Holy Family
and St. Mary’s Home Health Operations**

In addition to maintaining that an all-professional unit, including therapists, is the only appropriate unit herein, the Employer submits that its March 1, 2001 co-sponsorship agreement merging the health care facilities operated by Holy Family including, Holy Family Medical Center and Holy Family Health Center in Des Plaines, Illinois, and Saint Mary of Nazareth Hospital Center in Chicago, Illinois dictates that all the professionals employed by the home health care operations formerly operated by St. Mary and Holy Family should be included in the unit.⁵

⁴ The funding for this program comes from private insurance, from the individual being treated or the facility where the patient resides.

⁵ The Employer submits that the Regional Director should include the professional home health care staff from Holy Family and St. Mary’s to the same extent that she includes the same job classifications at RHHS. That is, for

The record shows that while RHC has taken over Holy Family and St. Mary's and is now the Employer of those employees, the record shows that many of the terms and conditions of employment for those employees have not yet been merged into the RHC system. Thus, the record shows that, at the time of the hearing, the St. Mary and Holy Family employees were on separate payroll compensation systems and did not participate in the RHC compensation and benefit programs. RHC Vice-President Paul Skiem was not able to pinpoint with certainty, the exact time table for the conversion of the St. Mary or Holy Family personnel to the RHC benefit and compensation system. RHHS Vice President Cleary-Fishman testified that the Holy Family home care personnel that accepted employment with RHHS would be transferring into the RHHS Skokie facility sometime in April, 2001, and then the Holy Family home health facility would be closed. There were eight full-time, part-time, and registry RNs; two Physical Therapist and four registry Physical Therapist; two registry Occupational Therapist; one registry Speech Therapist; and one registry Medical Social Worker working out of the Holy Family facility at the time of the hearing. With respect to the St. Mary home health care operation, the time table for integration of those employees into the RHC/RHHS system is a little bit later, with July 2001 being indicated as the likely target date. Further it is indefinite whether the St. Mary staff will be transferred to operate from the Skokie facility or will operate as a branch office from their current location. There are eleven RNs, five registry RN s, and one RN Liasion working out of the St. Mary's operation.

I. Private Agency RN

There remains one issue involving the use of an agency RN as a home health RN on the 'public pay side' of the RHHS operation. The Employer provided this information to the hearing officer on the last day of the hearing and provided very little actual information on the record concerning the relationship between RHHS and the agency, Advanced Medical Resources. What information that was provided in the record shows that RHHS contracted with the agency for the services of an RN at the beginning of March, 2001 for the fixed period of 12 weeks.

Analysis and Conclusions:

In determining an appropriate unit in a non-acute health care setting, the Board applies the "pragmatic or empirical community of interest" analysis, set forth in *Park Manor Care Center, Inc.*, 305 NLRB 872, 875 (1991). Under the analysis set forth in *Park Manor*, the Board considers the traditional community if interest factors and the factors found relevant by the Board in its unit rulemaking proceedings in the health care industry, the evidence presented during the hearings on unit rulemaking for the acute care hospitals in the health care industry, and prior precedent. *Collective-Bargaining Units in the Health Care Industry, Final Rule*, 284 NLRB 1580 (1989); see also, *Jefferson Health System*, 330 NLRB No. 107 (2000).

Of particular relevancy to the issues raised herein, the Board found during the rulemaking process that RN's in acute care hospitals constitute a discrete group warranting separate representation because of their distinctive interests from other employees in acute care hospitals. In finding that RNs constituted a distinct group from other professional employees the Board relied upon the RNs': (1) unique work schedules, (2) unique responsibilities, (3) common

example, if the RHHS therapists are included in the unit, then the therapists from Holy Family and St. Mary should be included in the unit.

supervision by other nurses, (4) separate labor market and distinct wages from those of other professionals, (5) separate education, training and licensing requirements, (6) interaction with other RNs, (7) lack of regular and recurring contact with other professionals, (8) lack of interchange, and (9) history of representation and bargaining in separate units. *Board's Rulemaking for the Health Care Industry*, 53 Fed. Reg. at 33911-33917, 284 NLRB at 1544-1552.

Herein as found in the rulemaking process, the RNs have distinction duties and skills from other professional employees. The RNs are in charge of the overall nursing care for the patients. As such, the RNs do not focus on any one aspect of care. Thus, RNs are responsible for developing and monitoring the overall care plan for a patient, and they are primarily responsible for maintaining voluminous medical records required in the course of a patient's treatment. RN's, unlike therapist and other professionals, are involved with patients from their admission to their discharge, and they monitor the patients progress in relation to the care plan throughout the patient's treatment. Further, there are certain medical procedures that only the RN is permitted by law to perform. On the other hand, the other professional employees focus on one particular aspect of patient care that is within their particular field of specialization. Thus, the physical therapists focus on the patients' motor skills, the occupational therapist on the patients' daily living skills, the speech therapist on the patients' swallowing and communication skills, and the medical social worker on the patients' psychosocial care.

In rulemaking, the Board stated:

[W]hereas other professionals specialize, and have intermittent contact with patients, nurses are unique in that their profession demands continuous interaction with patients.... Nursing practice involves the nursing process by which nurses assess patients, as reflected in the nursing practice acts.... RNs continually monitor all patients to be sure that physicians' orders are being carried out and that procedures are not proving harmful.... RNs must be alert for errors by other professionals; for example, if another professional, e.g. a pharmacist, dispenses medication in an improper dosage, the overall responsibility rests with the RN who, if she administers it, is also responsible.... The RNs' special responsibility is based on a cluster of knowledge which they possess, as opposed to a single skill.

53 Fed. Reg. 33911, 284 NLRB 1528 at 1544.

In *Mercy Hospitals of Sacramento*, 217 NLRB 765,767 (1975), a leading Board decision prior to the rulemaking, the Board stated:

The primary and indeed overriding responsibility of registered nurses is to maintain the best possible patient care.... Their duties and responsibilities with respect to patient care cannot by law and licensure be delegated to any other employees, including other professionals, and must therefore be performed exclusively by registered nurses. Apparently the recognition of this unique degree of professional responsibility, the joint committee on accreditation of hospitals, as well as the laws of several states, requires all member hospitals to maintain a separately administered department of

nursing, under the direction of a director of nursing, for the purpose of establishing and measuring all departmental regulations and qualifications.

The RNs unique duties with regard to the overall patient care also impose some unique working conditions for RNs as contrasted to other professionals such as the therapists at issue herein. Thus, the RNs are on call from 8:00 a.m. until midnight on weekends and from 4:30 p.m. until midnight during the week. Field RNs are also required to be on call one weekend day and two weekdays per month. The therapists are not required to be on call, for they are not able to provide any sort of medical treatment to patients beyond the narrow scope of the profession. The Board, in its rulemaking, cited their different work schedule in support of the RNs being a separate appropriate unit. 53 Fed. Reg. 33911, *supra*.

Part of the uniqueness of RNs from other professional employees in the health care industry stems from licensing requirements. Each professional specialist - RNs and the various therapists - have their own unique licensing requirements that grants them the authority to perform specific duties within the context of their specializations and excludes other employees from performing those duties. The licensing requirements for RNs and their duties for the overall care of patients are unique from other professionals such as therapist in that they may present conflicts with other professionals as observed by the Board in the rulemaking process:

RNs' licensing requirements may actually conflict with the requirements and practices of other professions. For example, as previously indicated, RNs fill out incident reports on mistakes in medication dosages made by other workers. This type of responsibility may result in antagonism between the RNs and other professionals which might impede collective bargaining by the professionals as a group.

53 Fed. Reg. 33912, 284 NLRB at 1545.

There is a total lack of interchange, either permanent or temporary, between the RNs and the other professional employees. Obviously, this is caused by the literal application of the various Illinois practice acts which dictate what duties RNs and other professionals may and may not perform as well as licensing requirements. There is, nevertheless, recurring interaction between the RNs and the other professional employees. The interaction takes place when the professionals communicate telephonically concerning patient care issues, and when the therapists inquire about the RNs' assessment and evaluation of patients.

As for the organizational structure, a RN must supervise the RNs, by law. Thus, the RNs report to team leaders, who are RNs, and the Director of Clinical Services, Francine Ostrander, RN. While the therapists report clinically to the case managers, and operationally to the RN team leaders, The record clearly indicates that the therapists are not required to be supervised by other therapists or RNs and have, in the past, been organized into distinct departments.

While the RNs wages are not significantly different from the therapist and other professional employees involved herein, the labor market for RN's gives them unique considerations from other professional employees:

The labor market for nurses is distinct from that for other professionals... When nurses and employers bargain about wages, they look to wages of RNs at other hospitals, not wages of other professionals. Finally, nurse career ladders are very short in terms of pay, quickly leveling

out after relatively brief experience. Hospitals recognize the separate RN market by having nurse recruiters; no similar position exists for other professionals.

53 Fed. Reg. 33912, *supra*.

The distinctions between RNs in the health care industry from other professional employees, such as the therapists involved herein, have led to a strong desire for separate representation of RNs from other professional employees as noted by the Board during the health-care rulemaking:

The testimony shows that not only have the RNs desired separate representation.... but other professionals do not appear to react favorably to their inclusion with RNs.... [O]ther professionals often do not participate in the organizing campaigns and are hostile to being included in bargaining units with RNs.

* * *

The main concern of the non-nursing professionals is of being overwhelmed by the large number of nurses and not having their concerns given priority. RNs are the largest professional group in any hospital. In fact, RNs constitute approximately 23% of the hospital workforce.... They may outnumber other professionals by ratio of 4 to 1 or more.... The non-nurse professionals are also concerned that RNs could ignore their interests when they conflict with RNs'....

* * *

There were a number of issues of unique concern to nurses in collective bargaining.... While there may be examples of how special concerns of the RNs have been addressed in all professional units, this does not necessarily demonstrate that RNs and other professionals have large numbers of common interests. Nurses can emphasize these issues in bargaining regardless of the concerns of non-RN professionals because RNs would constitute 80 % or more in a typical unit.... and often 100 % of those willing to participate in bargaining....

* * *

For example, RNs alone have recurring concerns with respect to floating, i.e. being temporarily transferred from one unit to another to cover understaffed units.... RNs have bargained for mandatory orientation both in their own unit and before floating to other units.... Floating and orientation generally do not concern other hospital professionals since they typically are not required to float to areas where they may be unqualified.... Moreover, other hospital professionals are not as concerned with staffing in general because they do not have constant patient care responsibilities like the RNs and because they are not in critically short supply....

* * *

The evidence shows that scheduling issues are of much greater concern to RNs than to other non-nursing professionals. RNs are virtually alone in their concerns with respect to mandatory overtime and double or rotating shifts, or evening, night and weekend shifts, all of which are said to increase the likelihood of nurse error.... There were only isolated examples of non-nurse professionals working late shifts or weekends. Many other professionals, like social workers, work primarily day shifts during the weekdays....

53 Fed Reg. 33914-33915, 284 NLRB at 1547-1550.

In the instant case, the ratio of RNs to other professional employees is not the four to one ratio discussed by the Board in its rulemaking; rather it is about two to one. However, if an all professional unit were deemed the only appropriate unit, the RNs would still dominate the unit, possibly to the detriment of other professional employees.

Since rulemaking, the Board has considered on several occasions the appropriateness of units limited to registered nurses in a variety of non-acute health care facilities – *McLean Hospital Corp.*, 311 NLRB 1100 (1993); *Holliswood Hospital*, 312 NLRB 1185 (1993); and, *Charter Hospital of Orlando South*, 313 NLRB 951 (1994). In each of these cases, the Board found that the petitioned-for RN unit was an appropriate unit, instead of the employer's proposed all professional employees unit. Although these facilities are distinguishable in some ways from the instant operation, the employers therein made many of the same arguments, such as its use of multidisciplinary teams and more interaction between employees, to support their position that only an all professional employees units was appropriate. In each case, the Board rejected those arguments. More to the point, the Board in *Jefferson Health System*, 330 NLRB No. 107 (2000) found an the petitioned for all-RN unit to be an appropriate in the non-acute home health care setting in circumstances strikingly similar to the facts herein.

Notwithstanding the Board's recent determination of an all-RN unit as being an appropriate unit in the home health care setting in *Jefferson*, supra, the Employer asserts the functional integration resulting from its unique multi-disciplinary team approach for supplying patient care and similarity of wages, benefits, and working conditions dictates that an appropriate unit must consist of all RHHS' professional employees. Contrary, to the Employer I do not find these factors to be so significant as to override the separate community of interest that the RNs have from other professional employees. With regard to the impact of the multi-disciplinary team approach to patient care, the Board has found this does not negate the RNs separate community of interests:

In arguing that hospital workforces have moved away from a traditional structure, the industry relies heavily on the team concept, claiming that its use has resulted in greater integration among employees requiring integration of units. However, the team concept dates back many years in this industry. Hospital representatives relied on the existence of teams in their unsuccessful attempt to defeat the 1974 amendments.

* * *

The evidence does not support the industry's claim that participation on teams changes the employee's role. Collaboration among professionals is not new. For example, one of the most common teams is discharge

planning which historically involves nursing and social work. But the team approach does not alter each licensed professional's responsibilities or scope of practice.... Nor does participation on a team affect employee's wages, hours of work, employment benefits, qualifications, training, skills, job functions, or history of bargaining.

53 Fed. Reg. 33907, 284 NLRB at 1537-1538 (citations omitted).

The Employer contends that the Board routinely includes therapists and social workers in an all professional unit with registered nurses in non-acute health care settings, citing *Keokuk Area Hospital*, 278 NLRB 242 (1986), *Middletown Hospital Association*, 282 NLRB 541 (1986), *Schnurmacher Nursing Home*, 327 NLRB 253 (1998), and *Midway Hospital Medical Center*, 330 NLRB No. 199 slip op. (2000). With regard to *Keokuk Area Hospital* and *Middletown Hospital Association*, I find those cases inapplicable as the units found appropriate in those cases were based on the "disparity of interest" test which was abandoned by the Board in course of rulemaking for acute care health facilities. See, *Park Manor Care Center, Inc.*, *supra* at 875. With regard to *Schnurmacher Nursing Home* and *Midway Hospital Medical Center*, the cited cases do not demonstrate how the units including RN's with other professional employees came to be, whether they were the result of agreement between the parties or Board findings. Accordingly, I am unable to give them controlling weight on the facts found herein. Furthermore, *assuming arguendo* that those cases involved findings of the Board that included RNs in broader units, I find that Board's approval of the decision in *Jefferson Health System*, *supra* more relevant to the disposition of the unit issue herein based upon the substantial similarity between the facts found in that case to those herein.

For the reasons set forth herein, and applying the empirical community of interest test set forth in *Park Manor Care Center*, *supra*, I find a separate unit of RNs to be an appropriate unit for the purposes of collective bargaining. In so finding, I rely on the various distinctions between RNs and the other professional employees, including the fact that RNs perform different duties with different skills, provide the most patient care of any of the stated professionals, have fundamentally different licensing requirements than other professionals, have working conditions that differ from other professionals, and do not interchange with the other professional employees. Having found that an RN only unit is appropriate, there remain a number of issues regarding the inclusion or exclusion of certain RNs from the unit and the scope of the unit regarding the Employer's acquisition of two home health care operations.

RN Unit Composition Issues:

At the hearing the Petitioner took the position that registry employees should be excluded from any unit found appropriate. The Petitioner, however, did not make any contentions or arguments in its brief concerning the inclusion or exclusion of the registry employees from the unit. The Employer took the position that registry employees working more than four hours per week during the preceding quarter should be included in the unit and eligible to vote.

The Board, absent significant disparities in the number of hours worked by on-call employees, finds on-call employees, such as the registry employees herein, to be regular part-time employees if they worked an average of four or more hours per week during the quarter prior to the voter eligibility date. *Sisters of Mercy Mealth Corporation*, 298 NLRB 483 (1990). Inasmuch as the parties are in agreement that the unit includes regular part-time RN's and the

record does not show any significant disparity of hours worked by the registry employees, I find that registry RNs working in the RN job classifications included in the unit, as set forth above, working an average of four or more hours per week during the quarter prior to eligibility date herein to be in the unit and eligible voters according to the formula set forth in *Davison-Paxon*, 185 NLRB 21, 24 (1971).

As set forth above, the Petitioner would exclude Home Care Nurses-Private Duty, Nurse Liaisons and Senior Services Liaisons, User Analysts, and Outcome Analysts as lacking a community of interests with the other RNs. The Employer contends that these classifications should be included in an RN unit as they have a substantial community of interests with other RNs that the parties agreed were appropriately included in an RN unit.

The record evidence establishes the Home Care Nurses/Private Duty working in comprehensive care are directly involved in patient care, exercising the same skills and having many of the same job functions as the public pay home care nurses. Other than working in clinics rather than patient's homes and having less paper work than the public pay home care RNs, the Home Care Nurses/Private Duty RNs have the same community of interests as the RNs that the parties agree should be included in the unit found appropriate herein. Accordingly, I find that the Home Care Nurses/Private RN's working in comprehensive care should be included in the unit found appropriate.

The Employer would include and the Petitioner would exclude the LPNs working in comprehensive care. LPNs are generally found to be technical employees, and there is no evidence in the record to show that the LPNs working in comprehensive care are other than technical employees. See, *Park Manor Care Center*, *supra* at 876-77. Under Section 9(b)(1) of the Act, professional employees, such as the RNs herein, may not be included in a unit with non-professional unless they vote in favor of such inclusion. As a result of Section 9(b)(1) of the Act, a unit can not require the inclusion of both professional and non-professional employees to be appropriate - each grouping, professional and non-professional must on its own constitute an appropriate unit. As the the Petitioner does not desire to mix in non-professionals in the professional unit it seeks, and such inclusion can not be required, the LPNs are excluded from the unit found appropriate herein.

Nurse Liaisons, while not providing direct patient care, utilize their RN medical expertise to regularly assess patients and evaluate their potential as patients in the Employer's home health care system. In this regard their job functions support and contribute to the work done by the RNs included in the unit found appropriate much in the same way as RN Intake Nurses and Document Review RN's that the parties agree should be included in the unit found appropriate. Their positions require an RN license, and thus they share many of the same employment interests as the RNs providing direct patient care. Accordingly, I shall include them in the unit found appropriate herein.

With regard to the Senior Service Liaison, the record indicates that the occupant of this position at nursing homes performs many of the same types of functions that the Nurse Liaisons perform at the acute care hospitals. However, the record does not indicate whether the Senior Service Liaison position requires an RN license or demonstrates the degree of medical knowledge and skills the position requires. Accordingly, I am unable to determine if the Senior Service Liaison shares a community of interest that requires the inclusion of the position in the unit found appropriate. Thus, the Senior Service Liaison may vote under challenge.

With regard to the disputed positions of User Analyst and Outcome Analyst, while the record shows that the occupant of each position is currently an RN, the job descriptions of the User Analyst and Outcome Analyst do not required the occupant to be a licensed RN. Thus, a serious difficulty could occur if those two positions were included in the unit and a non-RN filled one or both of the positions. Furthermore, the job functions for these two positions are more information system oriented than having to do with skilled nursing care. Based on the foregoing analysis, including the above-specifically noted distinctions, I find that the User Analyst and Outcome Analyst positions do not share a sufficiently substantial community of interest with the RNs; thus, I shall exclude them from the unit.

There remains one issue involving the use of the agency RN as a home health RN on the 'public pay side' of the RHHS operation. While the issue of the status of this RN was raised for the first time on the last day of the hearing and little evidence was introduced on the record regarding this RN, the record shows that the assignment is only for a definite duration of twelve weeks. Accordingly, without regard to whether this RN is an employee of a joint employer whom the Petitioner would exclude from the unit, I find that this RN meets the Board's definition of a temporary employee and should be excluded from the unit. *Indiana Bottled Gas Co.*, 128 NLRB 1441, fn. 4 (1960).

Unit Scope Issues

There remains the issue of whether the RN only unit found appropriate herein must include the home health care RNs currently working the Employer from the recently acquired home health care operations of Holy Family and St. Mary's. It is undisputed that RHC merged with the two other health care operations, and senior RHC and RHHS management personnel testified without contradiction that the RHC would be applying common wages, hours and other terms and conditions of employment to the employees of the merged entities after a transition period. Moreover, it is undisputed that RHHS intends to manage the newly acquired operations from its Skokie operation, transfer and base the Holy Family employees out of the Skokie facility, and either transfer and base the St. Mary's RNs out of Skokie or operate the facility acquired from St. Mary's as a branch office, with case assignment and clinical management headquarter out of the Skokie facility.

The record clearly indicates that the home health care RN's acquired by the Employer from Holy Family and St. Marys must be included in the unit found appropriate. They are RN's employed by the Employer and they have or will share the same community of interests as the Employer's other RN's working from the Skokie facility. The record shows that home health care RN's from Holy Family will definitely be merged into and indistinguishable from the other home health care RN's of the Employer. While there is a possibility that the home health care RNs from St. Mary's may continue to operate out of the former St. Mary's facility as a branch office, rather than being assigned to the Skokie facility, this factor does not warrant their exclusion from the unit found appropriate as this factor would not distinguish them from the RNs included in the unit. Most of the RN's included in the unit found appropriate perform their job functions away from the Skokie facility in the homes of patients or in other facilities operated by the RHC and have little physical presence at the Skokie facility. They can drop off their paper work at various drop off points maintained by the Employer at other facilities, and they can communicate with that facility through their laptop computers. Even as a branch office, the RNs working out of the former St. Mary's facility will receive case assignments from Skokie and

administratively managed to some degree from the Skokie facility. Furthermore, they like the other RNs, will be required to attend the mandatory team meetings and quarterly town hall meetings at the Skokie facility. Since there will shortly be no characteristics distinguishing the disputed employees from the current RNs as to wages, hours, and other terms and conditions of employment, as well as common supervision, indential skills, and duties, I find that it is appropriate to include the former St. Marys and Holy Family home health care RNs in the unit.

There are approximately 85 employees in the unit found appropriate.

470-1733-0100-4000;
1733-8000; 440-3300